

The Community Resource Kit

Guidance for people setting up and running community organisations



Section 3

Organisational structures

THE COMMUNITY RESOURCE KIT

Section 1: **Getting started**

Section 2: **Planning**

Section 3: **Organisational structures**

Section 4: **Governance**

Section 5: **Policies**

Section 6: **Meetings**

Section 7: **Financial management**

Section 8: **Record-keeping**

Section 9: **Raising funds**

Section 10: **Employment**

Section 11: **Communications**

Section 12: **Information technology**

CONTENTS (SECTION 3)

1 **Introduction**

Words used

1 **Initial considerations**

3 **Characteristics of different legal structures**

5 **Unincorporated groups**

Key features

Rules and processes

Advantages

Limitations

6 **Umbrella groups**

Advantages

Limitations

7 **Formal organisational structures**

Advantages

Benefits of incorporation

Separate legal identity

Perpetual succession

Limited liability

Choosing the right structure

8 **Incorporated societies**

Key features

Rules

Minimum requirements

Final tips on rules

Process for setting up an incorporated society

15 **Charitable trusts**

Charitable purposes

Key features

Rules

Rules checklist

18 **Other organisational structures**

Companies

Co-operative companies

Industrial and provident societies

Māori land trusts

Pūtea trusts

Whānau trusts

Ahu whenua trusts

Whenua tōpū trusts

Kai tiaki trusts

20 **Charities commission**

Functions

Registration

Name

Charitable purposes

Qualification of officers

Tax exemptions

22 **Dissolution and winding up**

Incorporated societies

Charitable trusts

Companies

23 **Where to go for more information**

Online resources

Other resources

Introduction

Most community groups start with a person or a number of people informally providing a service or working on a specific project. From there, a group and its activities may grow to a point where it needs to be organised on a more formal basis. There are many options available, from informal unincorporated structures to common formal structures, such as incorporated societies and charitable trusts.

This section provides some basic guidance and tips on a range of topics related to organisational structures for community groups. It looks at everything from unincorporated groups to incorporated societies and charitable trust boards, as well as the less common formal structures, such as companies and Māori land trusts. The Charities Commission and related topics are discussed as well as how to dissolve your organisation and liquidation.

Words used

There is a lot of terminology and jargon for describing the different ways community groups can organise themselves and it can get confusing. Throughout this section the terms 'organisational structure' and 'legal form' are used to refer to unincorporated groups as well as more formal structures such as incorporated societies, charitable trusts etc. The term 'entity' – for example 'legal entity' – is also used.

Organisations that are registered under the Charitable Trusts Act 1957 may be referred to as either 'registered' or 'incorporated' charitable trusts or societies. Here, the term 'registered' is generally used.

Initial considerations

Before your group decides what sort of organisational structure will suit it best, you should have gone through the planning process and be clear about the group's role in the community, the nature of your project and how you intend to operate. Fitting the organisational structure around the group's activities is much better than trying to fit the group's activities around the organisational structure.

You need to be clear about:

- flexibility – how much flexibility do you need as the project or service develops?
- size – will there be any limit to the size of the group?
- what the desired culture and values of the group are
- what activities the group proposes to undertake (the various legal forms have different restrictions on their activities while an unincorporated group will have very few)
- who will make the decisions – do you want to separate governance, management and ownership and have controls outside the group?
- funding – how much is needed, from whom and for what?
- accountability – how will the group's financial performance be monitored?
- liability – who will be liable if things go wrong?
- responsibilities – management, governance and operational.

When you have answers to these questions, you will be in a much better position to choose the right structure for your group.

Tip: Keeping It Legal – E Ai Ki Te Ture has a very useful *Getting Started* fact sheet to help your organisation decide on an appropriate structure. Visit: <http://keepingitlegal.net.nz/learn-more/getting-started/>

Characteristics of different legal structures

	Unincorporated group	Incorporated society	Registered charitable trust (society-based)	Registered charitable trust (trust-based)	Company	Industrial and provident society	Māori land trust
Legislation	None	Incorporated Societies Act 1908	Charitable Trusts Act 1957	Charitable Trusts Act 1957	Companies Act 1993	Industrial and Provident Societies Act 1908	Te Ture Whenua Māori Act 1993
Minimum number of people required	Two individuals	15 individuals, five corporate bodies, or a mix of both (corporate bodies count for three people)	5 individuals or existing society	Two or more trustees	One or more shareholders	Seven individual members	Trustees
Decision-making	By members at general meeting/by committee	By members at general meeting/by committee	By members at general meeting/by board	By trustees/trust board	By directors/shareholders at AGM	By members at general meeting/by committee	By trustees
Liability of members/trustees	Personal liability of members	In general, limited personal liability, provided decision makers act prudently and within the group's purpose and, if charitable, not for personal gain (specific provisions apply to company directors and Māori land trust trustees)					
Reporting requirements	None – unless registered under the Charities Act 2005	Registrar of Incorporated Societies requires: <ul style="list-style-type: none"> changes of rules and office annual financial statements (unless registered under the Charities Act 2005) 	Registrar of Incorporated Societies requires: <ul style="list-style-type: none"> changes of rules and office 	Registrar of Incorporated Societies requires: <ul style="list-style-type: none"> changes of rules and office 	Companies Office requires: <ul style="list-style-type: none"> annual return and changes of name, office, rules and directors 	Registrar of Industrial and Provident Societies requires: <ul style="list-style-type: none"> annual return 	Registrar of the Māori Land Court requires: <ul style="list-style-type: none"> annual financial statement and changes of trustees
Disposal of assets on liquidation	Surplus assets can be distributed among members unless charitable status, or other tax-exempt status applies	Surplus assets can be distributed among members unless charitable status, or other tax-exempt status applies	Surplus assets must be passed on to other charitable organisations	Surplus assets must be passed on to other charitable organisations	Surplus assets can be distributed among shareholders unless charitable or other tax-exempt status applies	Surplus assets can be distributed among members unless charitable or other tax-exempt status applies	As the court directs, or to beneficial owners or successors

	Unincorporated group	Incorporated society	Registered charitable trust (society-based)	Registered charitable trust (trust-based)	Company	Industrial and provident society	Māori land trust
Best suited for	One-off situations, informal groups and clubs	Not-for-profit groups and clubs – particularly membership or volunteer-based groups – especially smaller groups with strong community links	Good for most not-for-profit groups with a charitable purpose	Not-for-profit organisations with a charitable purpose – especially where the initial trustees want to maintain control and succession	Good for groups with a commercial purpose (such as a community business)	Good for co-operatives, generally with a business/ commercial purpose (such as craft or workers' co-ops)	Only for Māori land owners or shareholders of corporations
Advantages	No external reporting requirements (unless the group is seeking tax benefits or charitable status) Informal structure, with few rules or restrictions	Democratic, membership-based organisation structure Easy, efficient structure for non-profit organisations (particularly smaller ones)	Provides a better framework for governance/management than incorporated societies (especially in larger, more complex groups) Only requires five individuals to incorporate Charitable status and limited liability of members/trust board	Keeps control in a few hands (the trustees), while enjoying limited liability. This provides longer-term stability (but may lead to staleness/stagnation)	Easy to set up Useful where the group has some commercial activities (such as a community enterprise) Keeps control in a few hands (the directors), while enjoying limited liability Often easier to obtain loans (but this may require personal guarantees from directors)	Profits can be distributed to members (unless the group has charitable status)	Protection of land from alienation Strong shareholder participation
Limitations/disadvantages	Members may be liable for the debts of the group Not a separate legal entity Not recommended for on-going groups, where groups are employing staff or receiving external funding	Finding (and maintaining) 15 members may be a problem Risk of committees being overturned annually (at AGM) which may lead to short-term decision-making and limited succession planning (note this can be addressed in the rules) Not suitable for groups with a commercial purpose	Groups need to have a charitable purpose and cannot distribute profits to members The distinctions between the different types of charitable trusts can be confusing	Control is with the trustees – there is no accountability to a wider membership base Trustee succession planning is usually by director appointment The distinctions between the different types of charitable trusts can be confusing	Generally too complex for charitable community organisations Reporting requirements are more complex than other structures Directors may be liable if they fail to meet their obligations	Not suitable for broad membership-based organisations Because they are quite rare, many accounting and legal professionals may not fully understand how they work	Not suitable for commercial enterprises Can be cumbersome to operate due to the wide shareholder participation

Unincorporated groups

An unincorporated group can be any group of people that gets together for some purpose, whether it is to change something in the community, provide some service, work on a project or simply to socialise. Nearly all groups start off informally, without a highly organised structure or any legal standing, and small groups may decide they don't need to formalise these things. In New Zealand, the largest proportion of not-for-profit institutions (61 per cent) are unincorporated societies .

Key features

Typically, an unincorporated group will have some key features:

- no separate legal identity or legal status
- members may be able to come and go at will
- there may be a written or oral contract between the members
- the start date will be the date on which the group was formed.

Rules and processes

As a matter of good practice, an unincorporated group should record its rules and processes for managing the group's affairs and making decisions. These rules could be based on the group's past practice and should be agreed upon by all your members. Although there is no legal requirement for writing down your rules, it will help your group operate smoothly and will also be useful if any disputes arise, especially if there are assets or money involved.

Advantages

There are some advantages of a group being unincorporated, including:

- few legal or administrative requirements
- flexible structure, with few rules or restrictions

Limitations

Some limitations of unincorporated status include:

- membership status is uncertain
- members may be personally liable for debts and other obligations
- unincorporated groups are not separate legal entities so they have no ongoing existence that is independent of their members and no legal standing to enter into contracts, own property or borrow money
- there is no legal requirement to have rules, so resolving disputes can be problematic.

Tip: Unincorporated status tends to suit groups that are social in nature, or groups that have formed to address an urgent, short-term issue. It may be easier and cheaper to remain unincorporated, however, members should be aware that everyone in the group could be personally liable for any potential debts. To see if it is the right structure for your group, fill in Keeping it Legal's *Checklist for an unincorporated group*: <http://>

Umbrella groups

Another way for groups to work successfully in their communities without incorporating themselves is by going under the wing of an umbrella group. An umbrella group is usually a larger organisation that is an incorporated body and can provide resources and backing to smaller groups that work in similar areas and/or share similar goals. There are many umbrella organisations in New Zealand at national and local levels, such as:

- NZ Council of Social Services (and the various local councils)
- ANGOA (Association of Non-Government Organisations of Aotearoa)
- New Zealand Federation of Voluntary Welfare Organisations (NZVWO)
- Volunteering NZ

Working with an umbrella organisation allows a smaller group to get on with projects without having to take on the costs and responsibilities of being incorporated. It can help with obtaining funding and the umbrella group may also receive and pass on any money to a group within its structure, possibly charging a handling or administration fee for its services.

Advantages

By using an umbrella organisation:

- you can make use of the skills and resources of the umbrella group
- you have no long-term commitment
- you may save on administration costs
- as a new group you can secure a small amount of funding
- you are working in partnership in the community.

Limitations

- your eligibility for grants may be limited
- employment arrangements and responsibilities can be confusing when the group under the umbrella wants to employ someone
- the umbrella group requires full disclosure of financial information
- individual liability may not be limited, so individuals in your group may not be protected from being sued
- problems can arise with how assets are dealt with

Tip: Make sure the umbrella group is a legal entity and get a written agreement to ensure the relationship is clear. Both parties should seek legal advice before signing any agreement between them. For more information visit: <http://keepingitlegal.net.nz/learn-more/unincorporated-groups> .

Formal organisational structures

When a group chooses to formalise its organisational structure, it becomes a legal charitable (or not-for-profit) organisation. The two most common formal structures for New Zealand community groups are incorporated societies and charitable trusts. While the two formal set-ups have some differences, both of them establish a group as a legal entity that is separate from the people who formed or make up the group.

There are two ways an organisation can be incorporated:

- a society may incorporate under the Incorporated Societies Act 1908
- a charitable society or trust may incorporate under the Charitable Trusts Act 1957.

Advantages

There are many advantages to having a formal organisational structure, including:

- there's a formal document (deed/constitution) setting out what the group does and how it will do it
- access to a wider range of grants, donations, contracts and loans
- better credibility and accountability
- the possibility of applying for charitable status, and so benefiting from exemptions from income tax, resident withholding tax and gift duty
- prevention of people being personally liable for the group's debts.

Benefits of incorporation

Separate legal identity

As a separate legal entity, an incorporated group can:

- execute documents in its own name
- enter into contracts in its own name, subject to its own rules
- buy, sell, own, lease and rent property, subject to its own rules
- borrow money and give securities, subject to its own rules
- sue and be sued in its own name.

Perpetual succession

An incorporated group has 'perpetual succession', which means the group continues to exist even if the membership of the group changes (as long as it complies with the law and is not wound up). This permanence gives the group further legal recognition and makes it more creditable, which will help when seeking grants or donations or entering into contracts.

Limited liability

The members of an incorporated group benefit from gaining limited liability. This means that when the group incurs any debts or other legal liabilities, it can usually only be sued in its own name, and its members are not usually personally responsible. However, members can be held personally liable when, for instance, they don't make it clear to third parties that any liability the member incurs is actually for the group.

Choosing the right structure

If you are thinking about formalising the structure of your group, you will already have a clear purpose and vision for your organisation. You also need to take into account the type of project and the role the organisation plays in the community e.g. the organisation may want to act as a facilitator and develop local projects; it may support other groups and projects; or it may undertake trading activities, either for itself or for the community. Each type of structure has advantages and disadvantages that will suit some types of groups and projects better than others. The information here provides some general guidelines about the different organisational structures, but it's recommended that you look at more technical and legal information such as:

- Keeping it Legal – E Ai Ki Te Ture – <http://keepingitlegal.net.nz/check/legal-form/>
- Societies and Trusts Online – <http://www.societies.govt.nz/cms/incorporated-societies/starting-an-incorporated-society>
- CommunityNet Aotearoa's Getting Started: Legal Structures How-to guide – <http://www.community.net.nz/how-toguides/legalstructures/>

Tip: Getting the advice of a lawyer and/or an accountant will help you decide which organisational structure best suits your needs.

Incorporated societies

The incorporated society is the second most popular organisational structure for New Zealand not-for-profit organisations, accounting for almost a quarter of all groups . An incorporated society is set up under the Incorporated Societies Act 1908. Once incorporated, it means a society can legally run its affairs as though it were an individual person. The New Zealand Companies Office – which is part of the Ministry of Economic Development – is responsible for administering the Societies and Trusts Register that registers incorporated societies.

Key features

An incorporated society:

- has a set of rules that governs the way the organisation operates
- has a minimum of 15 individuals or five corporate bodies such as other societies, charitable trusts or companies (each corporate body counts as three individuals), or a mix of both
- can make profits and employ people, but may not distribute profits to members
- has its income taxed although it may be eligible for a range of tax exemptions.

Rules

The rules (or constitution) of an organisation is its most important document, as it sets out the vision or purpose for which the organisation is being set up. It is the place to embed your kaupapa, or your guiding principles and values.

Section 6 of the Incorporated Societies Act 1908 sets out the minimum requirements that must be included in an incorporated society's rules. These are:

- name
- objects (or purposes)
- how people become members
- how membership is terminated
- how rules are to be altered, added to, or rescinded
- how to give notice of, and run, general meetings as well as voting methods
- appointment of officers
- the control and use of the common seal
- the control and investment of funds
- the powers (if any) of the society to borrow money
- the disposition of property in the event of the society being put into liquidation.

Tip: As long as these minimum requirements are included, the group is free to include additional rules if it wishes. (More detail is given on each of these minimum requirements next.)

Minimum requirements

Name

There are some restrictions on the name that you can use. The society's name must end with the word 'Incorporated' and it can't be the same as (or deceptively similar to) that of any other society, company or organisation.

Tip: If you want to register with the Charities Commission, you need to have a name that the Commission believes is not offensive or likely to mislead the public.

Objects

The objects of a society is its purpose. The objects can be specific or quite general but they must be lawful and should include the society's main activities, activities it would like to do in the future, and a general statement allowing it to do anything else to further its aims. It's important that they reflect your mission, but are flexible enough to adapt to changes in the future. Note that any changes to your objects need to be approved by two-thirds majority of the members at a general meeting, and any change in the future may affect your charitable status (if this applies).

Membership

The rules must set out:

- who can be a member
- whether there are different types of members e.g. full members who are actively involved or associate members who are less involved (different types of members can also have different voting rights)
- how many people can become members
- how they become members e.g. apply in writing
- how membership is ended, either by the individual or the society itself.

You may also wish to include a rule to allow you to charge membership fees. And you must keep a list or register of members.

Meetings

In addition to the mandatory rules about general meetings, you may also have rules relating to annual general meetings (AGMs or hui-a-tau) and special general meetings (SGMs) that also involve all the members.

General meetings

These provide a way for the membership as a whole to keep in touch. There is no set number of meetings that must be held but the rules may state a minimum. In a small society, general meetings are likely to be held regularly e.g. every month. In a larger society, where a committee does most of the work, these meetings may be held less often.

Annual general meetings (AGMs)

These are held once a year. You may want to state in your rules that it must be held within 14 or 16 months of the previous AGM. The AGM will elect the office holders and any committee, consider the financial statements, review the year's activities and plan for the year ahead.

Special general meetings (SGMs)

These may be called outside the normal general meeting times to discuss urgent business or to consider an important issue such as an amendment to the rules. The rules should set out how members can request a SGM (e.g. by giving written notice to the secretary) and whose job it is to organise it (e.g. the secretary).

Notice of meetings

Your rules should set out how notices of meetings are to be given to members. In the case of an SGM, the reason for calling the meeting should be included in the notice. Your rules must also state when the notice is to be received e.g. 14 days before the meeting.

Quorum

A quorum is a minimum number of members required to attend before a meeting can begin or continue. If the quorum is not reached, the meeting cannot be held. The number of the quorum will depend on the size and circumstances of your group. It shouldn't be set too high or you may have difficulty holding a meeting. Nor should it be set too low, to avoid the risk of a small group hijacking the organisation.

Running meetings

Your rules must state who will run the meetings. Any additional details of how you want to organise your meetings can be added.

Decision-making

Decisions can be made either by consensus or by voting. The rules must set out the voting procedure. They should cover whether all or only certain types of members can vote. You will need to state how a vote is to be held, e.g. by voices, by show of hands, or in writing. You will also need to state how a decision is passed and how many members need to be present. You will have to decide if you want all votes to be exercised in person at the meeting, or whether you will allow postal votes or proxy voting (where someone can vote on behalf of another member). A proxy vote should be in writing and signed by the member who cannot attend.

Committees

You don't have to have a committee as your group can be run solely by general meetings. However, if the group has more than 20 people, you will find a committee an advantage as it can streamline the decision-making process and you can also establish sub-committees to attend to particular projects or tasks. The committee will be appointed or elected at the AGM. Your rules should set out:

- the number of committee members (there is no maximum or minimum required)
- who is to convene the committee e.g. the society's chairperson or rotated amongst members
- how often the committee is to meet during the year
- how decisions are made and voted on at committee meetings
- whether the committee can co-opt extra members
- whether the committee can form sub-committees.

Tip: Your group should decide how wide the committee's powers will be – e.g. whether it has the power to borrow money or the power to co-opt non-members to form subcommittees – but it's important to allow the committee to function without the need to call constant meetings.

Officers of the society

Groups do not have to appoint officers. Some groups choose to operate as a collective, sharing tasks and responsibilities, sometimes on a rotating basis among members. It is also possible to draw on the assistance of people outside the group. If officers are appointed, there are usually three – the chairperson, the secretary and the treasurer.

Tip: If you want to apply to register under the Charities Act 2005, officers (all trustees and all members of a board or governing body) will need to meet the qualification requirements of the Act. For more details, visit: <http://www.charities.govt.nz/>

Chairperson

The chairperson convenes meetings of the society and any committee it may elect, and ensures that the rules of the society are followed. The chairperson may also take on a leadership role in the activities and management of the group.

Secretary

The key roles of the secretary are:

- to keep a register of members
- to prepare notices for general meetings
- to keep minutes of all meetings
- to keep the official stamp or common seal of the society in safe-keeping
- to handle incoming and outgoing correspondence.

Treasurer

The role of the treasurer (either alone or in association with an in-house financial administrator or outside accountant) is:

- to keep proper financial records
- to bank all money received by the society
- to pay all accounts
- to prepare annual accounts and file them with the Registrar of Incorporated Societies
- to look after any taxation requirements e.g. PAYE and GST.

Tip: For further details on the role of the chairperson, secretary and treasurer see *Section 4 – Governance*.

Other officers

Other officers of the society may include: a patron or patrons, a fundraising co-ordinator, a publicity co-ordinator, and an education co-ordinator.

The common seal

A common seal is usually a rubber stamp that includes the name of the society and the words 'common seal'. All societies must adopt a common seal on incorporation and the society's rules will set out when it will be used and how. Generally, it is used on legal documents and contracts that the society enters into.

Tip: Contact a commercial stationer for information about ordering a seal.

Finances

Your rules must state:

- that proper accounts will be kept
- who will control your funds e.g. sign cheques and make withdrawals (this will usually be your treasurer and one or two other people appointed by the committee)
- that all funds are to be banked into the society's bank account
- that any surplus funds are to be placed in secure investments.

Financial statements must be prepared and presented to the AGM each year. These must include:

- your income and expenditure
- your assets and liabilities
- any mortgages, charges or securities over any of your property.

A copy of the financial statements must be sent to the Registrar of Incorporated Societies and an officer or solicitor of the society must certify that the statements have been approved by the members of the society at a general meeting. Financial statements only have to be audited if it is set out in the rules of the society.

Tip: It's best not to make auditing a requirement in your rules as you can still appoint an auditor if need be, e.g. when it's required by a funding body.

Powers

The powers can be as wide or narrow as the group requires, but if you plan to borrow money, how it can be borrowed must be included in the rules. The rules should also cover the powers:

- to invest money
- to lease, buy or sell property
- to employ staff
- to sign contracts.

Surplus assets

Your rules must state what will happen to any assets after you've paid all your debts. You may want to distribute any surplus assets to another society or trust with similar aims to your own.

Tip: If the society is registered with the Charities Commission, any surplus assets will need to be distributed for charitable purposes.

Final tips on rules

- Include your kaupapa, your mission, guiding principles and values in your constitution. This isn't required by law, but it provides a public statement about your organisation and what you stand for.
- It's useful to have a general clause stating how any dispute between members or between members and the committee will be resolved e.g. by mediation. Don't be too prescriptive in the constitution – your policies and procedures will set out the detail.
- Charitable status – depending on the reason for your group, you may want to register as a charity with the Charities Commission and obtain the tax and other benefits of registration. The main things to consider are:
 - the purposes need to be charitable (see below)
 - no member can obtain any personal financial gain (pecuniary profit) from being a member of the group (although a member can be paid for work done as long as it is no more than a reasonable 'open market' value)
 - on winding up, any surplus must be distributed to other charitable organisations
 - alterations to the constitution cannot be made that would affect the charitable status.

Tip: To get some ideas, look at the sample set of rules or the rules of other incorporated societies available at *Societies and Trusts Online* – <http://www.societies.govt.nz/cms/incorporated-societies/rules-of-incorporated-societies>

For further details or guidance on developing your rules, visit: *Keeping it Legal - E Ai Ki*

Process for setting up an incorporated society

The following shows the process for setting up an incorporated society.

1. Your group wants to set up an incorporated society.
2. Meet and:
 - a. decide on a name of the group
 - b. decide the overall mission, purpose and values of the organisation (this starts to develop your rules or constitution).

Refer to *Section 1 – Getting Started*, and *Section 2 – Planning*, for more information on developing your mission and strategic planning.

3. Go to Societies and Trusts Online website (<http://www.societies.govt.nz>) and:
 - a. check the name is available
 - b. review rules of other incorporated societies and the sample set of rules
 - c. download application form or ring 0508 762 438 for forms to be posted out.
4. Draft a set of rules (this is usually done by a small group, with the draft taken to the larger group in the next step).
5. Call a meeting of at least 15 people (or equivalent corporate bodies) willing to be the founding members. At this meeting your group needs to:
 - a. approve the rules
 - b. complete the application for incorporation documents
 - c. appoint a chairperson, secretary, treasurer and management committee
 - d. set a membership fee (or agree not to have one).
6. Send the following completed documents back to the Companies Office:
 - a. the application for incorporation document
 - b. a copy of your rules
 - c. the certification form for the rules
 - d. \$100 lodgement fee.
7. The Companies Office informs your group that it is now an incorporated society and sends you a certificate.

8. To maintain your registration you will need to file the following documents with the Registrar of Incorporated Societies:

- a. annual financial statement
- b. rule changes (including name changes)
- c. address changes.

If you are registered with the Charities Commission, you will need to notify changes and file an annual return (including annual accounts) with the Charities Commission instead of the Registrar of Incorporated Societies.

Tip: If your organisation has a charitable purpose, registering with the Charities Commission will entitle you to an exemption from income tax and resident withholding tax. If you want to apply for registration under the Charities Act 2005, you need to meet their requirements for registration:

- a) the name needs to be suitable i.e. not offensive or liable to mislead the public
- b) the purposes need to be charitable
- c) the officers need to be qualified under the terms of the Act.

You will also need to fill out an application form, an Officer Certification Form (one copy for each of your officers), and send in a copy of your rules, including all amendments. For more details visit: <http://www.charities.govt.nz>

Charitable trusts

A charitable trust is the other main legal structure that community groups may consider. Fifteen per cent of New Zealand not-for-profit institutions are charitable trusts .

There are three main types of charitable trust:

- **Unincorporated charitable trust** – this may be used when someone sets up a trust to provide funds for a particular cause. Like any unincorporated group, there are limitations to this type of trust and it's not recommended for an ongoing community group.
- **Registered charitable trust (trust-based)** – in this model, two or more trustees can set up a trust for a charitable purpose. This is useful if the initial trustees want to retain control of the organisation, including appointing further trustees.
- **Registered charitable trust (society-based)** – in this model, an established group (or a minimum of five people) can register a society as a charitable trust board under the Charitable Trusts Act 1957 as long as it meets the requirements of being charitable. On incorporation, the members of the society become members of the board.

The process of registering a trust or society as a charitable trust board under the Charitable Trusts Act 1957 starts with applying to the Registrar of Incorporated Societies at the Companies Office (see the flowchart on setting up a registered charitable trust).

Charitable purposes

Trusts or societies registered as charitable trust boards must act exclusively or principally for charitable purposes, which are:

- a) the advancement of education
- b) the advancement of religion
- c) the relief of poverty, sickness or disability
- d) any other purpose that benefits the community.

Note that a charitable organisation whose purpose falls under (d) must also be able to demonstrate 'public benefit'. This means the organisation must show that its purposes can produce a benefit that is recognised by law as beneficial, and that this benefit is available to the public or a sufficient section of the public.

Key features

A charitable trust board:

- is set up under the Charitable Trusts Act 1957
- has a board of at least two trustees (if it's a trust) or five members (if it's a society) to make decisions
- must have charitable aims – i.e. not be for private profit
- will have a trust deed (if it's a trust) or set of rules or constitution (if it's a society) under which it operates. A copy of these must be lodged with the Registrar of Incorporated Societies at the time of applying for registration
- once registered and incorporated, has a separate legal identity distinct from its members or trustees
- must be registered with the Charities Commission to obtain or keep charitable tax-exempt status.

Rules

As with incorporated societies, the rules (or trust deed or constitution) is a charitable trust's most important document as it sets out the organisation's purpose and sets the rules under which it must operate. The trust deed sets out the rules of a trust-based charity and the constitution sets out the rules of a society-based charity.

Rules checklist

Unlike the Incorporated Societies Act 1908, the Charitable Trusts Act 1957 does not state what needs to be included in the rules. However, to ensure the trust or board operates smoothly, it's good practice to include the following items in the trust deed or constitution:

- The purposes of the trust. These need to be charitable and should refer to the mission of the organisation.
- The area of operation. In general, Inland Revenue requires that your activities are restricted to New Zealand in order to obtain donee status for tax purposes (i.e. so that people making a donation can claim a tax deduction).
- The make-up of the board, including the number of trustees/board members, how they are appointed and how long they serve and how they can be removed.
- Whether trustees or members can be paid for their services – this is the 'pecuniary benefit' clause. You should specify that, if trustees or members are paid for their services, this may be no more than the market rate for the work done.

- Board and, if applicable, general members' meetings.
- Decision-making, quorum numbers and notice of meetings. You need to be careful that you do not set the quorum too high – if there are a couple of vacancies on the trust/board, you may have difficulty obtaining a quorum.
- Board's finances. As with incorporated societies, the accounts do not need to be audited unless the rules state this.
- Powers of the board. In the case of a society these are likely to be the same as those for an incorporated society. In the case of a charitable trust, the trustees are given authority to carry out the aims, which can be very wide or quite narrow depending on what suits the group.
- Permission to alter the trust deed or rules.

Tip: For more information on the legal details of establishing, incorporating and operating a charitable trust, and the distinction between the different types of charitable trust, visit:

- *Societies and Trusts Online* (<http://www.societies.govt.nz/cms/charitable-trusts>)
- *Keeping it Legal - E Ai Ki Te Ture* (<http://keepingitlegal.net.nz/learn-more/trusts/>)

Process for setting up a registered charitable trust

The following flowchart shows the process for setting up a registered charitable trust.

1. Your group wants to set up a registered charitable trust.
2. Meet and:
 - a) decide whether it will be society- or trust-based
 - b) decide on a name
 - c) decide who will be the trustees or board members and how the trust or society will operate
 - d) draft a trust deed or constitution that includes your aims, powers and rules of the trust or board.
3. Go to Societies and Trusts Online website (<http://www.societies.govt.nz>) and:
 - a) check the name is available
 - b) review rules of other charitable trusts
 - c) download application form or ring 0508 762 438 for forms to be posted out.
4. Call a meeting of the trust board. At this meeting your board or trustees need to:
 - a) approve the trust deed (trust-based) or rules (society-based)
 - b) approve the application for incorporation documents
 - c) complete the declaration form
 - d) complete the registered office form
 - e) elect a secretary, treasurer and management committee (for a society).
5. Send the completed documents back to the Companies Office.

6. The Companies Office informs your group that it is now a registered charitable trust and sends you a certificate.
7. To maintain your registration you will need to file the following documents with the Registrar of Incorporated Societies:
 - a) rule changes (including name changes)
 - b) address changes.

If you are registered with the Charities Commission, you will need to notify changes and file an annual return (including annual accounts) with the Commission.

Tip: By registering with the Charities Commission, an organisation with a charitable purpose can expect an exemption from income tax and resident withholding tax. If you want to apply for registration under the Charities Act 2005, you need to meet their requirements for registration:

- d) the name needs to be suitable i.e. not offensive or liable to mislead the public
- e) the purposes need to be charitable
- f) the officers need to be qualified under the terms of the Act.

You will also need to fill out an application form, an Officer Certification Form (one copy for each of your officers), and send in a copy of your rules, including all amendments. For more details visit: <http://www.charities.govt.nz/>

Other organisational structures

There are a number of less common organisational structures that community groups may choose to use, such as companies, industrial and provident societies and Māori land trusts. These structures can provide a better fit with a group's purpose and circumstances than the structures previously discussed. (For a comparative summary, see the chart 'Characteristics of Different Legal Structures' at the start of this section.)

Companies

Most larger community organisations will be either charitable trusts or incorporated societies. However, for some organisations, registering as a company may provide a better structure under which to operate. Companies are best suited to organisations that have a commercial aspect to them, such as a community-owned business. Companies can register as charitable entities with the Charities Commission – provided they meet the required conditions (visit: <http://www.charities.govt.nz/>).

Some common characteristics of companies are:

- they have directors appointed by individual members and/or other community groups
- shareholders are not personally liable beyond the value of their shareholding unless they give personal guarantees
- directors have limited liability
- to be charitable, they will have charitable or other community purposes stated in the constitution along with other special provisions restricting personal benefit to those involved.

Tip: For more in-depth information on companies visit:

- *Keeping it Legal - E Ai Ki Te Ture* – <http://keepingitlegal.net.nz/learn-more/companies/>
- *The Companies Office* – <http://www.business.govt.nz/companies/learn-about/companies/>

Co-operative companies

A co-operative company is one established for the purpose of allowing its owners to carry on business on a mutual basis. This is another option available, however, it's a specialist form of structure that is more appropriate for commercial entities, such as producer co-operatives.

Tip: For more information on co-operative companies visit: <http://www.business.govt.nz/companies/learn-about/other-entities/more-entities/co-operative-organisations>

Industrial and provident societies

Relatively few Industrial and Provident Societies (IPS) are registered these days. They were more common in the 1970s when co-operative businesses were popular. Taxi co-operatives are examples of this legal structure, which may be worth considering in some situations, such as when setting up a work, or arts marketing co-operative.

Tip: If you intend registering as a company or IPS, you should seek legal advice first. For more information on companies and other organisational structures visit *The Companies Office*: <http://www.companies.govt.nz>

Māori land trusts

There are five different types of trusts described in Te Ture Whenua Māori Act 1993/Māori Land Act 1993:

- Pūtea trusts
- Whānau trusts
- Ahu whenua trusts
- Whenua tōpū trusts
- Kai tiaki trusts.

Māori land trusts can only be set up by the owners of Māori land or their trustees. They are set up under a trust deed and registered with the Māori Land Court (Te Kooti Whenua Māori), with the primary goal of retaining Māori land in Māori ownership. Whānau and Pūtea trusts are the types that are most commonly used.

Pūtea trusts

These are designed to deal with uneconomical smaller share interests within a block or within various blocks of land. Te Ture Whenua Māori Act 1993 requires that the shares, and any income they produce, be held for Māori community purposes.

Whānau trusts

These are designed to hold and manage beneficial interests or shares in Māori land or general land owned by Māori. They enable whānau members to bring together all of their interests or shares in land, for the benefit or advancement of the whānau and the descendents of the tipuna (living or deceased ancestors) named in the trust order.

Ahu whenua trusts

These are land administration trusts designed to manage whole blocks of land administered by the Māori Trustee. They are often used for commercial operations and are the choice for many farming operations over Māori freehold land.

Whenua tōpū trusts

These are designed to manage land belonging to an iwi or hapu. They share many of the features of Ahu whenua trusts and are subject to the same restrictions.

Kai tiaki trusts

These are designed to protect minors or persons under disability who are unable to manage their affairs. They can be constituted over the person's land interests and personal property.

Tip: Te Puni Kōkiri's Effective Governance website has more detailed information on these trusts and other structures used by Māori organisations: <http://governance.tpk.govt.nz/why/types.aspx>

Information on Māori Land Trusts is also available from Māori Land Court Offices or from the Ministry of Justice website: <http://www.justice.govt.nz/courts/maori-land-court>

Charities Commission

Functions

The Charities Commission (referred to from now on as the Commission) was established on 1 July 2005 by the Charities Act 2005 (from now on referred to as the Charities Act). The Commission and the Charities Act are monitored by the Department of Internal Affairs.

The Commission has two main functions:

- to register and monitor charities
- to provide education and support to the charitable sector.

Registration

The Commission considers applications for registration from any organisation that meets its criteria. The organisation does not have to be incorporated. The main criteria are:

- the name needs to be suitable i.e. not offensive or liable to mislead the public
- the purposes need to be charitable
- the officers need to be qualified under the terms of the Charities Act.

Name

If an organisation is already incorporated (e.g. an incorporated society or registered charitable trust), the name of the organisation is the same name under which it was incorporated. Otherwise, the Commission decides if the name is offensive or liable to mislead the public.

Charitable purposes

Key criteria for charitable status are:

- income derived by the organisation is for charitable purposes i.e. the relief of poverty, the advancement of education, the advancement of religion or any other matters that are beneficial to the community
- the organisation is established and maintained for charitable purposes and not for the private monetary gain of any individual.

Qualification of officers

Officers (all trustees and all members of a board or governing body) will need to meet the qualification requirements of the Charities Act. The disqualifying factors are set out in section 16 of the Act, and include being an undischarged bankrupt, being under 16 years of age, having a conviction for dishonesty within the last seven years, as well as other criteria.

Tip: For information on what charities need to do to register and for online assistance with the registration process, visit: <http://www.charities.govt.nz>. It's free to register but there will be ongoing costs for filing your annual returns if your charity has a gross income of \$10,000 or more. The fees are \$50 for an online return and \$75 for a paper return.

Tax exemptions

Although registration with the Commission is voluntary, charitable organisations that want to obtain charitable tax-exempt status **must** be registered with the Commission.

There are further requirements in the tax legislation that mean following registration, charities will need to consider whether they meet the requirements for the tax exemptions. In most cases, charities with non-business income only (e.g. investment income such as interest and dividends) that are registered under the Charities Act will qualify for the exemptions. If a charity has business income, it will need to consider some further criteria.

On registration with the Commission, charities will receive correspondence from the Commission, notifying them that their application has been successful, and information from Inland Revenue to assist them in determining their tax position.

The Commission will advise Inland Revenue of a charity's registration so there may be no need to do so separately. Also, registered charities don't need to apply to Inland Revenue for donee status. Donee status means that individuals can claim a tax credit, and companies and Māori authorities can claim a deduction, for charitable donations from the public. Inland Revenue will determine whether your organisation qualifies for donee status by using the information provided on your application to register as a charity.

Tip: For further general information on the Charities Commission and the registration process, visit the Commission's website – <http://www.charities.govt.nz> .

For more information on the various tax exemptions available to charitable organisations, visit Inland Revenue's website – <http://www.ird.govt.nz/charitable-organisations/>

Dissolution and winding up

Dissolution is the act of ending an organisation's existence as a legal entity. There are many reasons why an organisation might be dissolved. It could be that the group has achieved its goals, or it may be necessary because the organisation is unable to continue due to insufficient membership or financial difficulties.

Liquidation (or winding up) is the process that brings an organisation's activities to an end. Liquidation begins when a liquidator is appointed and generally involves selling ('realising') the organisation's assets, paying its liabilities and distributing any surplus in accordance with its rules. The process of liquidation differs depending on whether the incorporated organisation is an incorporated society, a charitable trust board or a company.

Incorporated societies

Many incorporated societies will reach a point when they can no longer operate as a society e.g. membership numbers have dropped or it's in financial difficulty. An incorporated society can be put into liquidation in one of three ways:

1. Voluntarily by the members resolving at a general meeting (by simple majority) to do so and to appoint a liquidator. A second general meeting must be held to confirm this previous resolution.
2. By the Registrar of Incorporated Societies issuing a notice dissolving the society if he or she believes that the society is no longer operating, e.g. if the society fails to send in a copy of its annual financial statements. At the end of liquidation, the Registrar will remove the society from the Register and end its life as a separate legal entity.
3. By the High Court, on receipt of an application to do so from the society itself, a member, a creditor of the society, or the Registrar of Incorporated Societies.

Once a society is in liquidation, the activities of the society are stopped, debts are paid, and any assets are distributed in accordance with the rules. The proceeds from the society's assets are collected and distributed to its members (unless the rules state otherwise). If the incorporated society has charitable status, any surplus assets must be directed to other charitable organisations within New Zealand that have similar aims.

Charitable trusts

A charitable trust may be put into liquidation in one of two ways:

1. Voluntarily by the trustees or members who pass a resolution to that effect at a general meeting and confirmed at a second general meeting held specifically to consider winding up.
2. By the High Court, on receipt of an application to do so from the board itself, a board member, the Attorney-General, a creditor of the board, the Registrar of Incorporated Societies, or any other person whom the Court permits.

Under Parts 16 and 17 of the Companies Act 1993, the liquidation of a trust board is the same as that for a company. If there is any surplus after paying debts, this must be distributed to another charitable organisation in New Zealand. On liquidation, the trustees or officers of charitable trust boards may be personally liable in certain situations, e.g. if proper accounting records have not been kept.

Companies

A company may be put into liquidation in one of two ways:

1. Voluntarily, by the voting shareholders or the company's board.
2. By the High Court, on receipt of an application to do so from the company, a director, a shareholder or other entitled person, a creditor of the company, or the Registrar of Companies.

Liquidation of a company is when it ceases to operate or becomes bankrupt. The company's assets are sold and the proceeds are paid to the company's creditors with any surplus money distributed among the shareholders. If the company has charitable status, any surplus assets must be given to other charitable organisations within New Zealand that have similar aims.

The company needs to write to Inland Revenue for confirmation that Inland Revenue has no objection to the company being struck off the New Zealand Companies Register. Once a written response is received from Inland Revenue advising they have no objection, the final effect of liquidation is that the company is removed from the companies register.

Tip: For further information on liquidation, visit Societies and Trusts Online: <http://www.societies.govt.nz>, and the Companies office website: <http://www.business.govt.nz/companies/learn-about/receivership-liquidation-administration>.

Where to go for more information

Online resources

1. **Societies and Trusts Online** – www.societies.govt.nz. Information and resources for incorporated societies and charitable trusts, including the registration process.
2. **The Companies Office** – www.business.govt.nz/companies. Information on companies, and dissolution and liquidation.
3. **Keeping it Legal - E Ai Ki Te Ture** – <http://keepingitlegal.net.nz>. Information and handy checklists relating to the various legal forms of community organisations.

4. **Charities Commission** – www.charities.govt.nz . Resources and guidance for organisations looking at registering under the Charities Act 2005.
5. **CommunityNet Aotearoa** – see '*Getting Started: Legal Structures*' How-to Guide – www.community.net.nz/how-toguides/legalstructures/
6. **Inland Revenue Department** – www.ird.govt.nz/charitable-organisations/ . Information on tax matters for charitable organisations.
7. **Te Puni Kōkiri's Effective Governance** – see '*Types of Māori organisations*' – <http://governance.tpk.govt.nz/why/types.aspx>
8. **Māori Land Court, Ministry of Justice** – www.justice.govt.nz/courts/maori-land-court
9. **New Zealand Legislation** – www.legislation.govt.nz. For relevant legislation e.g. Companies Act 1993, Incorporated Societies Act 1908, Charitable Trusts Act 1957.
10. **SPARC Club Kit** – see '*Starting a club*' (www.sparc.org.nz/en-nz/communities-and-clubs/Toolkit-for-Clubs/Starting-your-Club/). See also *Legal structures and sample constitutions* (<http://www.sparc.org.nz/en-nz/our-partners/Developing-Capabilities/Governance-Templates/>)
11. **PilchConnect (AUS)** – see '*Getting Started*' (www.pilch.org.au/gettingstarted/). Though the information and tools are for community organisations in Victoria, Australia, the general overview of organisational structures will be useful to NZ groups.

Other resources

1. **Inland Revenue's** *Charitable organisations IR255*, Booklet and available online at: www.ird.govt.nz .
2. **Hutt City Council's Good Practice Guidelines** – see '*Section 1: Building the foundations*' – PDF file (40 KB) available for download from: www.huttcity.govt.nz/Council-Services/Community-Development/Good-Practice-Guidelines/ .